

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

HERBERT HENDERSON,

Defendant and Appellant.

B233879

(Los Angeles County
Super. Ct. No. BA378147)

APPEAL from a judgment of the Superior Court of Los Angeles County. Craig E. Veals, Judge. Affirmed.

Joshua L. Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant and appellant Herbert Henderson was charged by information with one count of inflicting corporal injury on a spouse in violation of Penal Code section 273.5, subdivision (a). It was also specially alleged that defendant inflicted great bodily injury (Pen. Code, § 12022.7, subd. (e)) and that defendant had suffered a conviction for a prior serious felony within the meaning of Penal Code sections 1170.12 and 667. Defendant pled not guilty.

Because of some delay in obtaining certain discovery, the court granted the prosecution's motion to dismiss pursuant to Penal Code section 1387.2, whereupon, pursuant to the parties' stipulation, the court proceeded on the original information and defendant waived further arraignment and pled not guilty again to all charges.

Before trial, defense counsel informed the court that defendant wished to make a motion to substitute appointed counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). The court cleared the courtroom in accordance with the required procedures and conducted a lengthy *Marsden* hearing on March 9, 2011, allowing defendant the opportunity to fully state his concerns about his appointed counsel on the record, and requiring counsel to state, in detail, the work that had been performed to date. Defense counsel described a fair amount of work and investigation that had been performed, and also explained some measure of difficulty in getting cooperation from defendant's mother to help counsel locate defendant's cousin as a possible witness to testify on defendant's behalf. Counsel had been unable to locate him. The court denied defendant's *Marsden* motion.

Trial by jury proceeded in May 2011. The primary prosecution witness was defendant's wife, Vickie Lynn Henderson. She testified that on the afternoon of November 13, 2010, she went to a barbeque with defendant at one of his friend's homes. Several hours later when they were getting in the car to leave, with defendant's cousin accompanying them for a ride home, defendant punched Ms. Henderson in the face with a closed fist. She said he had been "fussin[g]" and cursing at her, and calling her a

“stupid bitch,” and he caught her by surprise by hitting her when he got into the driver’s seat of the car.

He then drove them to his mother’s house, about a block away. Once parked in the driveway, defendant got out of the car and opened the passenger-side door and started trying to yank Ms. Henderson out of the car. Her seat belt was still latched, so he struggled and hit her, tearing her blouse. Ms. Henderson was able to unlock the belt, and defendant pulled her from the car and threw her on the ground, where he proceeded to punch her again, as many as six times. Ms. Henderson testified she was afraid, did not know what had caused the outburst, that he had never hit her before, and that she asked him what was wrong to no avail. She then asked him to stop and to take her home.

They got back into the car and continued on their drive home, with defendant still yelling and cursing at Ms. Henderson. Ms. Henderson testified they made several stops, including at a gas station because defendant’s cousin wanted to get out of the car, and at a store so Ms. Henderson could buy some water. She said she passed a note to the woman at the counter with the license plate number of their car and asked her to call the police. She also testified she dialed 911 on her cell phone. At some point during the drive, they were stopped in traffic at a red light and she saw a Sheriff’s Department patrol car and a bus. She jumped out of the car and ran to the bus for help.

Los Angeles County Sheriff Department deputies arrived at the bus and Ms. Henderson was eventually transported to the hospital for treatment. Ms. Henderson suffered bruises and swelling to her face, neck and chest, as well as a broken finger. She was released from the hospital the same day.

On cross-examination, defense counsel was able to elicit some inconsistencies in certain details of Ms. Henderson’s version of the incident, including when, or if, she had called the 911 operator and how many times defendant had punched or hit her. Under cross-examination, Ms. Henderson also admitted to having had four beers at the barbeque and that she had had earlier opportunities to flee during the course of the incident but had not done so. Defense counsel also questioned Ms. Henderson about a letter she had

written defendant asking for money several days before the incident. On redirect, Ms. Henderson denied that she made up any charges or claims against defendant to get money. A stipulation was read to the jury that the Los Angeles Police Department had no record of a 911 call originating from Ms. Henderson's cell phone.

The prosecution also called Melchor Oronoz, an officer with the Los Angeles Police Department, who interviewed Ms. Henderson at the hospital on the day of the incident. He corroborated that he observed injuries to her hand. His testimony regarding the version of the incident that Ms. Henderson reported to him that day largely corroborated Ms. Henderson's in-court testimony.

Defendant did not call any witnesses or testify on his own behalf as to the facts surrounding the incident of November 13, 2010. The court denied defendant's motion to dismiss pursuant to Penal Code section 1118.1.

Following deliberations, the jury returned a unanimous verdict finding defendant guilty of count one and finding the great-bodily-injury enhancement not true. The court denied defendant's motion to strike his prior felony strike under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Defendant waived his right to a jury trial on the bifurcated prior allegation. Over the advice of counsel, he admitted to a prior conviction for felony robbery in 1992.

The court sentenced defendant to the low term of two years on count one, explaining in part that defendant had no history of prior domestic violence against his spouse and that since his 1992 conviction for robbery, defendant had suffered primarily misdemeanor offenses. The two-year term was doubled to four years because of the prior conviction. Defendant was awarded a total of 440 days of custody credits and ordered to pay various fines and restitution.

Defendant filed a timely notice of appeal. We appointed appellate counsel to represent defendant. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that he reviewed the record and sent a letter to defendant explaining his

evaluation of the record. Counsel further declared that he advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days. Defendant did not file any supplemental brief with the court.

Based on our independent review of the record, we conclude there is substantial evidence in the record to support defendant's conviction under Penal Code section 273.5. (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Scott* (1978) 21 Cal.3d 284, 296.) No errors are apparent in the record, including with respect to the court's denial of defendant's *Marsden* motion and his *Romero* motion, both of which are reviewed for an abuse of discretion. (See *People v. Panah* (2005) 35 Cal.4th 395, 431; *People v. Williams* (1998) 17 Cal.4th 148, 162.) We have examined the entire record and are satisfied that appointed counsel fully complied with his responsibilities in assessing whether or not any colorable appellate issues. We conclude there no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.) We therefore affirm the judgment below.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.